

EMPLOYEE STATUS DETERMINATION

Professional/Technical Provider Assistants

State Relation Consultants

CSX Transportation

This is the determination of the Railroad Retirement Board concerning the status of Professional/Technical Provider Assistants (PTPAs) and State Relation Consultants (SRCs) under the Railroad Retirement Act (RRA) and Railroad Unemployment Insurance Act (RUIA). These individuals perform services for CSX Transportation (CSXT). Information about these individuals was obtained through a compliance audit of CSXT for calendar years 1991, 1992, and 1993.

CSXT uses three categories of state relations personnel;

- 1) State Relation Representatives (SRRs) **who are CSXT employees,**
- 2) Professional/Technical Provider Assistants (PTPAs), and
- 3) State Relation Consultants (SRCs).

The persons performing services under categories 2 and 3 are considered by CSXT to be independent contractors.

SRR's (CSXT employees) perform the following work duties:

- 1) Represent CSX interests before governmental agencies and legislative bodies at state and/or local level;
- 2) Facilitate relationships between all corporate entities and state and local governmental agencies, and legislative bodies;
- 3) Promote CSX with business, civic and public affairs organizations, and;
- 4) Assume public relations activities to enhance corporate image and visibility.

PTPAs perform the following services for CSXT:

- 1) Legislative bill tracking, monitoring and research;
- 2) Attendance at meetings/ sessions of governmental agencies and or legislative bodies;
- 3) Compilation of information and preparation of various reports and correspondence, and;
- 4) A variety of routine office functions.

Although the duties of SRCs vary, they consist primarily of the following:

- 1) Assist in representing CSX interests before governmental agencies and legislative bodies at state and/or local level;
- 2) Maintain legislative and regulatory administrative contacts sufficient to monitor legislative developments and administrative regulations of interest to CSX;
- 3) Assist in coordinating and facilitating relationships with state and local governmental agencies; and
- 4) Development of programs and financial sources for public grade crossing construction and maintenance programs.

Both the PTPAs and SRCs work under written contracts which declare them to be independent contractors and make them responsible for all applicable taxes. Both groups are paid a monthly salary or retainer and are ultimately responsible to CSXT's Director of State Relations. Both are presumably free to offer their services to other clients but, as will be seen, in the case of the PTPAs this would not appear to be practicable. None of the PTPAs or SRCs operate consulting businesses.

The PTPAs' function is generally to assist the SRRs who are CSXT employees. PTPAs perform a combination of administrative functions and clerical functions. They work on CSXT leased premises and use CSXT equipment and supplies. They receive operating instructions from SRR managers. Their hours generally coincide with CSXT business hours although their work time is flexible depending on their arrangement with their SRR manager.

SRCs do not work on CSXT premises and maintain no set hours. They work as much as needed to accomplish their objectives as dictated by the SRC to whom they report. They are essentially monitored only with respect to results. SRCs are not provided offices or supplies by CSXT. They are reimbursed for out of pocket travel and telephone expenses.

Section 1(b) of the RRA defines the term "employee" to mean "any individual in the service of one or more employers for compensation." Section 1(d)(1) of the RRA provides in pertinent part that an individual is in the service of an employer if:

(i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations. [45 U.S.C. § 231(d)(1)(i)].

Section 1 of the RUIA continues essentially the same definition.

**Professional/Technical Provider Assistants
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Applying the above definition to the facts with respect to the PTPAs, it is the Board's determination that they are employees of CSXT. Their job is essentially to assist the SRRs and they are supervised by an SRR manager, an employee of CSXT. Accordingly, PTPAs are "subject to the continuing authority of [CSXT] to supervise and direct the manner of rendition of [their services]."

SRCs are not, in the Board's opinion, employees of CSXT. Rather their role, as their name suggests, is closer to that of a true consultant who is not controlled as to the manner in which he or she renders services, but only with respect to results. Their mode of operation is that of an independent contractor in that they do not work on employer premises or use employer supplies and equipment and generally set their own hours.

For the reason discussed above, a majority of the Board finds that the PTPAs are employees of CSXT while the SRCs are not.

Glen L. Bower

V. M. Speakman, Jr.

Jerome F. Kever (Dissenting)

CSXTSRC.cov

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TO : The Board

FROM : Catherine C. Cook
General Counsel

SUBJECT: Coverage Determination
Professional/Technical Provider Assistants
State Relation Consultants
CSX Transportation

Attached is a proposed coverage ruling for Board approval.

Attachment